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2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

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6 JANE DOE,

Case No. 2:16-cv-01696-JAD-PAL

7 Plaintiff,

ORDER

8 v.

(Mot Compromise – ECF No. 57)

9 CLARK COUNTY SCHOOL DISTRICT,

Defendant.

10
11 Before the court is Plaintiff's Motion for the Compromise of a Minor's Claim
12 (ECF No. 57) filed under seal pursuant to the Court's Order (ECF No. 56).

13 **BACKGROUND**

14 The plaintiff is the mother of a minor child, Joann Doe, who alleges her daughter was
15 assaulted when she was thirteen years old and enrolled at Jerome D. Mack Middle School as a
16 special-education student. Joann has severe autism and the intellectual, mental, and emotional
17 capacity of a five-year-old child. As part of its special-education curriculum, Mack teaches general
18 life and household skills. These skills are taught in a hallway-like laundry room situated between
19 two other classrooms with a door on either side, a washer and dryer, and a bathroom. The doors
20 on either side have no windows, no locks, and will swing shut automatically unless propped open.

21 On May 10, 2016, defendant Fausto Barraza-Balcazar ("Barraza"), a special education
22 teaching aide, took Joann and another female student into the laundry room to rotate the laundry
23 from the washing machine to the dryer. While the other student went to the bathroom, Barraza
24 positioned Joann up against the laundry appliances and pressed his body, from chest to thigh,
25 against her backside. Joann's teacher, Natasha Thompson, walked into the laundry room and saw
26 the profile of Barraza pressed up against Joann. Joann then ran into the bathroom. Thompson
27 reported the incident that afternoon. Barraza was suspended the next day and terminated after an
28 investigation. The Clark County District Attorney's Office charged Barraza with four counts of

1 lewdness with a child under the age of fourteen. Three of these charges were for incidents
2 involving Joann, and the other for an incident involving another female student. Barraza
3 eventually pled guilty to one count of attempted lewdness with a child under the age of fourteen.

4 After the close of discovery, CCSD moved for summary judgment on the majority of the
5 claims. The plaintiff abandoned several of the claims, except those for negligence/negligent
6 supervision; negligent infliction of emotional distress; and a *Monell*-based civil rights claim under
7 42 U.S.C. § 1983. In an Order (ECF No. 46) entered March 15, 2018, the district judge granted
8 summary judgment in favor of CCSD on plaintiff's § 1983 and negligent infliction of emotional
9 distress claims, but denied the motion for summary judgment on the negligence/negligent
10 supervision claim. She found that there was a material issue of fact concerning whether CCSD
11 breached its duty of care by permitting the aide to be alone with students after a prior reprimand
12 for touching a student.

13 The district judge referred the matter to the undersigned to conduct a settlement conference.
14 At a settlement conference conducted on May 30, 2018, a settlement was reached under essential
15 terms memorialized in Minutes of Proceedings (ECF No. 54). A follow up telephonic status
16 conference was set for June 21, 2018, at 11:00 a.m. At the status conference, counsel for the
17 parties advised the court that the agreements had been drafted. However, plaintiff's counsel was
18 still waiting to hear from Medicaid to determine whether there was any outstanding lien.

19 This motion was filed after counsel for plaintiff confirmed that Medicaid had not asserted
20 a lien. All of the settlement and release documents have been executed, and plaintiff now seeks
21 approval from the court to compromise the claim of the minor plaintiff. The total amount of the
22 settlement reached with Clark County is \$50,000.00. Counsel for plaintiff waived the firm's 40%
23 contingency fee agreement and seeks no fees from the settlement proceeds. However, plaintiff
24 seeks approval to apportion settlement proceeds to enable plaintiff's counsel to recover costs in
25 the amount of \$44,602.52 with the balance of \$5,397.48 to be placed in a blocked trust account for
26 distribution when minor reaches age 18. The motion to approve the minor's compromise states
27 that plaintiff will provide proof of the establishment of a locked trust account containing the net
28 settlement proceeds as described within 30 days of this court's order.

1 The motion is not supported by a memorandum of points and authorities. As explained
2 below the Nevada Supreme Court has held that settlement of a minor's claim is not effective until
3 approved by the district court upon a verified petition in writing. *Haley v Eighth Judicial District*
4 *Court*, 128 Nev. 171, 173 (2012). A copy of the executed settlement agreement is not attached,
5 and the court has no information supporting the \$44,602.52 in costs for which plaintiff's counsel
6 seeks reimbursement. The court also does not have a copy of any written fee agreement between
7 plaintiff and counsel for plaintiff for attorney's fees and costs. The court will therefore deny the
8 motion without prejudice to filing a verified petition which complies with applicable law
9 governing compromise of the minor's claim. The verified petition should attach until counsel for
10 a copy of the signed settlement agreement, documentation supporting the amount of the costs
11 expended, and be supported by the affidavit of counsel attesting to the reasonableness and
12 necessity for the costs incurred.

13 DISCUSSION

14 The Ninth Circuit has held that district courts have a special duty under Rule 17(c) of the
15 Federal Rules of Civil Procedure "to safeguard the interests of litigants who are minors." *Robidoux*
16 *v. Rosengren*, 638 F.3d 1177, 1181–82 (9th Cir. 2011). Rule 17(c) specifically addresses actions
17 on behalf of a minor or incompetent person, and it provides:

- 18 (1) **With a Representative.** The following representatives may sue or
19 defend on behalf of a minor or an incompetent person:
20 (A) A general guardian;
21 (B) A committee;
22 (C) A conservator; or
23 (D) A like fiduciary.
- 24 (2) **Without a Representative.** A minor or an incompetent person who
25 does not have a duly appointed representative may sue by a next friend
26 or by a guardian ad litem. The court must appoint a guardian ad litem—
27 or issue another appropriate order—to protect a minor or incompetent
28 person who is unrepresented in an action.

24 In the context of proposed settlements and suits involving minor plaintiffs, the Ninth
25 Circuit has held that district courts have a "special duty" that requires the court "to 'conduct its
26 own inquiry to determine whether the settlement serves the best interests of the minor'." *Robidoux*,
27 638 F.3d at 1181 (quoting *Dacaney v. Mendoza*, 573 F.2d 1075, 1080 (9th Cir. 1978)). The court
28 must independently investigate and evaluate any compromise or settlement of a minor's claim to

1 assure itself that the minor's interests are protected, even if the settlement has been recommended
2 and/or negotiated by the minor's parent or guardian ad litem. *Id.* Prior to the *Robidoux* decision
3 federal courts in the Ninth Circuit typically applied state law and local rules governing the award
4 of attorney's fees. *Id.* In *Robidoux*, however, the Ninth Circuit found that this approach "places
5 undue emphasis on the amount of attorney's fees provided for in a settlement, instead of focusing
6 on the net recovery of the minor plaintiffs under the proposed agreement." *Id.* There, the Ninth
7 Circuit held the "district court's special duty to protect minor plaintiffs requires only that the
8 district court consider whether the net recovery" to the minor is fair and reasonable, without regard
9 to the amount plaintiffs agreed to pay plaintiffs' counsel. *Id.* at 1182. The Ninth Circuit concluded
10 that if the net recovery to the minor plaintiff under the proposed settlement was fair and reasonable,
11 "the district court should approve the settlement as presented, regardless of the amount the parties
12 agreed to designate for adult co-plaintiffs and attorney's fees." *Id.*

13 In *Haley v. Eighth Judicial District Court*, 128 Nev. 171, 273 P.3d 855 (2012), the Nevada
14 Supreme Court addressed the scope of the district court's authority to unilaterally modify a
15 settlement agreement under NRS 41.200, Nevada's statute governing the compromise of a minor's
16 claim. The Nevada Supreme Court concluded that the district judge may adjust the terms of the
17 settlement in accordance with the minor's best interests because NRS 41.200 "leaves the allocation
18 of fees and costs to the district court's discretion." *Id.* at 173, 273 P.3d at 857. NRS 41.200(1)
19 provides that when a minor has a claim for money against a third person, either the minor's parents
20 or a guardian ad litem has the right to compromise the claim. However, a compromise is not
21 effective until approved by the district court upon a verified petition in writing. *Id.*

22 In *Haley*, the Nevada Supreme Court rejected the attorney/petitioner's position that the
23 district court's authority to approve a compromise of a minor's claim merely "affords a district
24 court narrow authority to approve a compromise in its entirety and to then determine where the
25 money will be paid on behalf of the minor, as opposed to determining the amount the minor will
26 receive." 128 Nev. at 176, 273 P.3d at 859. Rather, the Nevada Supreme Court found that the
27 district court's approval of a minor's compromise "expressly encompasses a review of the
28 proposed apportionment of proceeds, including the amount to be used for attorney's fees and other

1 expenses.” *Id.* (citing NRS 41.200(2)(f)). The Nevada Supreme Court found this conclusion was
2 consistent with the general authority set forth in Nevada Rule of Civil Procedure 17(c), which
3 allows the district court to issue any “order as it deems proper for the protection” of a minor. In
4 reaching its decision, the Nevada Supreme Court noted that Nevada Rule of Civil Procedure 17(c)
5 is nearly identical to Federal Rule of Civil Procedure 17(c), which the Ninth Circuit had interpreted
6 as charging the court with a “ ‘special duty ... to safeguard the interests of litigants who are
7 minors.’ ” *Haley*, 128 Nev. at 177, 273 P.3d at 859 (quoting *Robidoux*, 638 F.3d at 1181–82).
8 Citing Ninth Circuit and other federal circuit case law, the Nevada Supreme Court concluded that
9 “NRS 41.200 allows the district court to assess the reasonableness of the petition to approve the
10 compromise of a minor’s claim and to ensure the approval of the proposed compromise is in the
11 minor’s best interest.” *Id.*, 273 P.3d at 860. “This review necessarily entails the authority to
12 review each portion of the proposed compromise for reasonableness and to adjust the terms of the
13 settlement accordingly, including the fees and costs to be taken from the minor’s recovery.” *Id.*


14 In this case, the court is informed the minor’s mother agreed to a 40% contingency fee
15 agreement after recovery of costs. Counsel for plaintiff graciously agreed to waive fees and seeks
16 only to recover out-of-pocket costs. However, the court has not been provided with information
17 sufficient to assess the reasonableness of the proposed distributions. Accordingly,

18 **IT IS ORDERED** that the **motion is denied without prejudice**. Plaintiff’s counsel shall
19 have until **September 26, 2018** to file a verified petition establishing the reasonableness of the
20 proposed settlement and proposed distribution of settlement proceeds. The verified petition must
21 attach:

- 22 1. A copy of the executed settlement agreement;
- 23 2. A copy of any written fee agreement between plaintiff and counsel for plaintiff
24 for attorney’s fees and costs,
- 25 3. An itemization with supporting documentation for costs disbursed by counsel
26 for plaintiff in the prosecution of this case for which reimbursement from
27 settlement proceeds is sought, and
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1 4. The verified petition must be supported by the affidavit of counsel responsible
2 for the billings in the case authenticating the information contained in the
3 verified petition and confirming the itemization of costs was reviewed and that
4 the costs were reasonable and necessary for the prosecution of this case.

5 DATED this 13th day of September, 2018.

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7 PEGGY A. LEEN
8 UNITED STATES MAGISTRATE JUDGE
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